



U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

AF
ITW

**(AMENDED) APPEAL BRIEF
TRANSMITTAL & PETITION FOR
EXTENSION OF TIME**

Docket Number:
10191/2020

Conf. No.
5731

Application Number
09/960,563

Filing Date
September 12, 2001

Examiner
Tuan C. TO

Art Unit
3663

Invention Title
NAVIGATIONAL SYSTEM

Inventor
Bernd PETZOLD et al.

Address to:

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop Appeal Brief-Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on

Date: July 25, 2007

Reg. No. 36,197

Signature:

Jong H. Lee

In response to the PTO communication mailed on April 30, 2007, in which the Examiner objected to the citation contained on page 5, lines 4-6 of the Appeal Brief (mailed on December 28, 2006), enclosed are three copies of an Amended Appeal Brief which omits the citation noted by the Examiner. A two-month extension of time for filing the Amended Appeal Brief is requested.

In the enclosed Amended Appeal Brief, Applicants have retained the argument that "isoline" is generally defined as "a line on a map or chart along which there is a constant value." Applicants have conferred with the Board of Appeals (in particular Mr. Craig Feinberg) on this issue, and Applicants were assured by the Board of Appeals that the Amended Appeal Brief (including the argument contained on page 5) is proper and in compliance with the relevant regulations. Should the Examiner believe there are grounds for objections to the Amended Appeal Brief, the Examiner is requested to contact Mr. Craig Feinberg of the Board of Appeals.

The Commissioner is hereby authorized to charge payment of the \$450 fee for the extension of time, and any additional fees associated with this communication, to the deposit account of **Kenyon & Kenyon LLP**, deposit account number **11-0600**.

Dated: July 25, 2007

By: JONG LEE for Gerard Messina

Gerard A. Messina (Reg. No. 35,952)

KENYON & KENYON LLP

One Broadway

New York, N.Y. 10004

(212) 425-7200

CUSTOMER NO. 26646

PATENT & TRADEMARK OFFICE

07/31/2007 RFEKADU1 00000040 110600 09960563
01 FC:1252 450.00 DA

(P. NO. 36,197)



[10191/2020]

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES**

Inventors : Bernd PETZOLD et al.
Serial No. : 09/960,563
Filing Date : September 12, 2001
For : NAVIGATIONAL SYSTEM
Group Art Unit : 3663
Examiner : Tuan C. TO
Confirmation No. : 5731

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop Appeal Brief-Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on

Date: July 25, 2007

Reg. No. 36,197

Signature: _____

Jong H. Lee

APPELLANTS' AMENDED APPEAL BRIEF
UNDER 37 C.F.R. § 41.37

S I R :

This Amended Appeal Brief is submitted in response to the PTO communication mailed on April 30, 2007. Applicants filed a Notice of Appeal dated August 31, 2006, appealing from the Final Office Action dated April 14, 2006, in which claims 16-20, 22-25, and 27-29 of the above-identified application were finally rejected. This Amended Appeal Brief is submitted by Applicants in support of their appeal.

I. REAL PARTY IN INTEREST

The real party in interest in the present appeal is Robert Bosch GmbH of Stuttgart, Germany. Robert Bosch GmbH is the assignee of the entire right, title, and interest in the present application.

II. RELATED APPEALS AND INTERFERENCES

No appeal or interference which will directly affect, or be directly affected by, or have a bearing on, the Board's decision in the pending appeal is known to exist to the undersigned attorney or is believed by the undersigned attorney to be known to exist to Applicants.

III. STATUS OF CLAIMS

Claims 16-20, 22-25 and 27-29 are pending in the present application, and all of the pending claims are being appealed. Among the claims presented during the prosecution of the present application, claims 1-14 were canceled in the Preliminary Amendment dated January 30, 2002; claims 15 and 21 were canceled in the Amendment dated January 7, 2005; and claims 26 and 30-36 were canceled in the Amendment dated August 18, 2005. Among the appealed claims, claim 25 is independent, and claims 16-20, 22-24 and 27-29 ultimately depend on claim 25.

IV. STATUS OF AMENDMENTS

No amendment has been made subsequent to the final Office Action mailed on April 14, 2006.

V. SUMMARY OF CLAIMED SUBJECT MATTER

With respect to independent claim 25, the present invention provides a navigational system (Fig. 1 – system 1), which system includes:

a calculation unit (Fig. 1 – unit 400) configured to calculate a first route (Fig. 6 – route 5) from a starting point (Fig. 6 – point S) to a destination (Fig. 6 – point Z), the calculation unit (400) further configured to calculate at least one second route (Fig. 6 – route 10) different

from the first route (5), from the starting point (S) to the destination (Z); (Specification, p. 5, l. 5-6; p. 6, l. 21-25);

a reproducing device (Fig. 1 – device 700) configured to reproduce the calculated first route (5) and the at least one second route (10) for selection by a user; (p. 5, l. 9-11 & 17-18; p. 6, l. 32-34; p. 7, l. 4-5); and

a communications unit (Fig. 1 – unit 1000) configured to receive information regarding traffic disruptions on the calculated first route (5) and the at least one second route (10), the reproducing device (700) configured to reproduce the information regarding the traffic disruptions; (p. 5, l. 21-25);

wherein the reproducing device (700) is configured to reproduce the traffic disruptions one of: a) in the form of isolines (Fig. 2 – lines 25, 30, 35, 40, 45, 50) (p. 8, l. 25-31); and b) in the form of an isographic diagram (Fig. 3 – diagram 55) (p. 9, l. 19-23).

VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

The following ground of rejection is presented for review on appeal in this case:

(A) Whether pending claims 16-20, 22-25 and 27-29 are anticipated under 35 U.S.C. § 102(b) by U.S. Patent No. 5,911,773 ("Mutsuga").

VII. ARGUMENTS

A. Rejection of Claims 16-20, 22-25 and 27-29 under 35 U.S.C. § 102(b)

Claims 16-20, 22-25 and 27-29 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,911,773 ("Mutsuga"). Applicants respectfully submit that the rejection should be reversed for at least the following reasons.

To anticipate a claim under 35 U.S.C. § 102(b), the Office must demonstrate that each and every claim limitation is *identically disclosed* in a single prior art reference. (See Scripps Clinic & Research Foundation v. Genentech, Inc., 18 U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991)). "The identical invention must be shown in as complete detail as is contained in the claim." M.P.E.P. § 2131. If any claimed element is absent from a prior art reference, it cannot

anticipate the claim. See Rowe v. Dror, 112 F.3d 473, 478 (Fed. Cir. 1997). To the extent that the Examiner may be relying on the doctrine of inherent disclosure to support the anticipation rejection, the Examiner must provide a “basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics necessarily flow from the teachings of the applied art.” (See M.P.E.P. § 2112; emphasis in original; see also Ex parte Levy, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990)).

Claim 25 recites, in relevant parts, the following: “a reproducing device configured to reproduce the calculated first route and the at least one second route for selection by a user; and a communications unit configured to receive information regarding traffic disruptions on the calculated first route and the at least one second route, the reproducing device configured to reproduce the information regarding the traffic disruptions; wherein the reproducing device is configured to **reproduce the traffic disruptions** one of: a) in the form of **isolines**; and b) in the form of an **isographic diagram**.”

In support of the rejection, the Examiner relies on the display device (12) of Mutsuga as being allegedly equivalent to the “reproducing device” of Applicants’ claim 25. In particular, in the “Response to Amendment” section of the final Office Action, the Examiner contends the following: a) “in Figure 15A [of Mutsuga], the main route with a congested section has been indicated as well as the general route”; and b) “while showing the indication of congested section on the main route (see Figure 15A), the display device reproduces the information regarding the traffic disruption in the form of isolines.” In response, Applicants note that while Mutsuga teaches the display of a congested route section in Fig. 15A, nothing in Mutsuga teaches or suggests display of isolines or an isographic diagram. The terms “isolines” and “isographic diagram” are explicitly defined in the Applicants’ Specification and clearly illustrated in Figures 2 and 3. For example, “isolines” are defined as “representing boundaries of traffic disruptions having a constant size,” (original Specification, p. 8, l. 30-31), and Fig. 2 illustrates a plurality of isolines 25, 30, 35, 40, 45 and 50 each defining a geographical area having a particular traffic flow rate (p. 9, l. 1-14). In addition, “isographic diagram” is illustrated in Fig. 3 and clearly defined as a diagram “in which the different regions between the isolines are represented using a different color or brightness.” (P. 9, l. 19-23).

To the extent the Examiner argues in the Advisory Action (8/2/06) that “isolines are not limited as defined in the Applicants’ specification, isolines are defined generally as lines

on a map or chart,” this assertion is completely flawed both factually and legally: it is a fundamental rule of claim interpretation that the claims should be given “the broadest **reasonable** interpretation” **that is consistent with the specification and the interpretation that those skilled in the art would reach**. (See M.P.E.P. 2111, citing In re Hyatt, 211 F.3d 1367 (Fed. Cir. 2000), and In re Cortright, 165 F.3d 1353 (Fed. Cir. 1999)). First, the conventional definition of “isoline” does not include any “line on a map or chart”; instead, the widely-accepted definition of the term “isoline” is “a line on a map or chart along which there is a constant value,” as can be from any dictionary definition. Accordingly, the definition of “isoline” asserted by Applicants is entirely consistent with the widely-accepted definition of the term, and there is absolutely no basis for the Examiner’s assertion that any line on a map or chart qualifies as an “isoline.” In addition, even if the ordinary and customary meaning of a claim term were somehow different from the definition asserted by Applicants (which is clearly not the case in this application), “the inventor’s written description of the invention, for example, is relevant and controlling insofar as it provides clear lexicography or disavowal of the ordinary meaning.” C. R. Bard Inc. v. United States Surgical Corp., 73 U.S.P.Q.2 d 1011, 1014 (Fed. Cir. 2004). Since Applicants have clearly indicated in the specification that “isolines” are defined as “representing boundaries of traffic disruptions having a constant size,” and since this definition is entirely consistent with the widely-accepted definition of the term, i.e., “a line on a map or chart along which there is a constant value,” there is absolutely no basis for the Examiner’s contention that any line on a map or chart qualifies as an “isoline,” and that such an interpretation is the **interpretation that those skilled in the art would reach**.

In contrast to the claimed features recited in claim 25, Figs. 15(A) and 15(B) and the associated description in Mutsuga (col. 9, l. 61 – col. 10, l.3) clearly indicate that the lines shown in these two figures are **routes** for purposes of illustration, and there is absolutely no indication of any isolines or isographic diagram. Accordingly, there is absolutely no reasonable interpretation of Mutsuga that would support the conclusion asserted by the Examiner that Mutsuga discloses the claimed feature that “the reproducing device is configured to **reproduce the traffic disruptions** one of: a) in the form of **isolines**; and b) in the form of an **isographic diagram**.”

Independent of the above, Mutsuga only discloses that **either** a first or a second calculated route is able to be output on the display device, and there is no indication that both first and second routes are able to be **simultaneously displayed on the display**, let alone

simultaneously displayed for selection by a user. To the extent the Examiner insists on relying on the lines and the text included in Figure 15(A) of Mutsuga for the conclusion that multiple calculated routes are simultaneously displayed, Applicants note that the associated description in Mutsuga specification (col. 9, l. 61 – col. 10, l.3) clearly indicates that **Fig. 15(A)** is merely used to **illustrate a situation** where “**data indicating traffic congestion** on the main road has been received,” (col. 9, l. 62-64), but there is no indication of **an optical display of two routes for selection by a user**, let alone any indication of an optical display of **information regarding the traffic disruptions on the calculated first route and the at least one second route**. The fact that a figure in the patent shows two routes does not mean that a visual display device simultaneously displays the two routes. Accordingly, Mutsuga clearly fails to teach or suggest anything relating to “a reproducing device configured to **reproduce the calculated first route and the at least one second route for selection by a user**; . . . the reproducing device configured to **reproduce the information regarding the traffic disruptions [on the calculated first route and the at least one second route]**.”

For at least the foregoing reasons, Applicants respectfully submit that claim 25 and its dependent claims 16-20, 22-24 and 27-29 are not anticipated by Mutsuga.

VIII. CONCLUSION

For the foregoing reasons, it is respectfully submitted that the final rejection of claims 16-20, 22-25 and 27-29 should be reversed.

Claims Appendix, Evidence Appendix and Related Proceedings Appendix sections are found in the attached pages.

Respectfully submitted,

KENYON & KENYON LLP



(R. No. 36,197)

Dated: July 25, 2007

By: SONG LEE for Gerard Messina

Gerard A. Messina

Reg. No. 35,952

(212)425-7200

CUSTOMER NO. 26646

PATENT & TRADEMARK OFFICE

APPENDIX TO APPELLANTS' APPEAL BRIEF
UNDER 37 C.F.R. § 41.37

CLAIMS APPENDIX

The claims involved in this appeal, claims 16-20, 22-25 and 27-29, in their current form after entry of all amendments presented during the course of prosecution, are set forth below:

16. The navigational system according to claim 25, further comprising:
 - a selection unit configured to enable the user to select one of the reproduced routes; and
 - a route guidance unit configured to generate navigational information for a position between the starting point and the destination on the selected route and to transmit the navigational information to the reproducing device for reproduction.
17. The navigational device according to claim 25, wherein the calculated first route and at least one second route are reproduced on the reproducing device as a function of at least one predefined route criterion.
18. The navigational system according to claim 17, wherein at least one of a traffic jam probability, travel time, speed, route distance, fuel consumption, and regions through which calculated routes should not travel is one of: specified as the at least one predefined route criterion via an input unit, or fixed as the at least one predefined route criterion.
19. The navigational system according to claim 17, wherein a weighting of the at least one route criterion is one of: specified via an input unit, or fixed.
20. The navigational system according to claim 25, further comprising:
 - an input device configured to enable the user to input data to manipulate or change at least one of the reproduced routes, the manipulated or altered routes being selectable by the user for route guidance.

22. The navigational system according to claim 25, wherein the information regarding traffic disrupts includes information regarding traffic flow.

23. The navigational system according to claim 25, wherein the reproducing device is configured to reproduce the information regarding the traffic disruptions in conjunction with the calculated first route and the at least one second route.

24. The navigational system according to claim 25, wherein the reproducing device is configured to reproduce the information regarding the traffic disruptions separately from the reproduction of the calculated first route and the at least one second route.

25. A navigational system, comprising:

- a calculation unit configured to calculate a first route from a starting point to a destination, the calculation unit further configured to calculate at least one second route different from the first route, from the starting point to the destination;

- a reproducing device configured to reproduce the calculated first route and the at least one second route for selection by a user; and

- a communications unit configured to receive information regarding traffic disruptions on the calculated first route and the at least one second route, the reproducing device configured to reproduce the information regarding the traffic disruptions;

- wherein the reproducing device is configured to reproduce the traffic disruptions one of: a) in the form of isolines; and b) in the form of an isographic diagram.

27. The navigational system according to claim 25, further comprising:

- a selection unit configured to enable the user to select one of the reproduced routes,

- wherein the calculation unit is configured to calculate at least one additional route which differs from the selected route, the at least one additional route starting from an instantaneous position as a new starting point to the destination, in response to receiving information regarding a traffic disruption on the selected route.

28. The navigational system according to claim 25, wherein the communications unit is further configured to receive information regarding a type of traffic disruption, and the reproducing device is configured to reproduce the type of traffic disruption.

29. The navigational system according to claim 25, wherein the reproduction is configured to at least one of optically and acoustically reproduce.

EVIDENCE APPENDIX

In the present application, there has been no evidence submitted pursuant to 37 C.F.R. §§ 1.130, 1.131 or 1.132, or other evidence entered by the Examiner and relied upon by Appellants in the present appeal.

RELATED PROCEEDINGS APPENDIX

No appeal or interference which will directly affect, or be directly affected by, or have a bearing on, the Board's decision in the pending appeal is known to exist.